



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION**

In re:

JUANA FLORDELIZA PHILLIPS

Debtor.

Case No: 6:20-bk-18117-MH

Chapter: 7

**ORDER DENYING MOTION TO CONVERT
FROM CHAPTER 7 TO 13**

Hearing Held:

Date: May 26, 2021

Time: 11:00 a.m.

Place: 3420 Twelfth St.

Riverside, CA 92501

Courtroom: 303

Juana Floredeliza Phillips ("Debtor") filed a Chapter 13 voluntary petition on December 29, 2020. Debtor's case was converted to Chapter 7 on February 8, 2021. On April 6, 2021, Debtor filed the instant motion, now seeking to convert her case back to a Chapter 13.

On May 3, 2021, Debtor filed a Declaration re: non opposition to the motion. The same day, the Court entered an order as follows:

1 The Court notes that, contrary to the assertion in the motion, the instant case was previously
2 converted on February 8, 2021. The caselaw is split regarding whether a debtor may
3 reconvert a case under 11 U.S.C. § 706(a), and, if so, what showing is required. *See*
4 *generally In re Banks*, 252 B.R. 399 (Bankr. E.D. Mich. 2000) (providing summary of
5 caselaw). Under any interpretation of § 706(a), Debtor has not made the required showing,
6 given that the instant motion is skeletal and contains no admissible evidence. Debtor may
7 file a supplemental brief addressing the permissibility of reconversion under § 706(a), and
8 the appropriate legal standard to apply, by no later than May 11, 2021.
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11 [Dkt. 44]. Debtor has not filed a supplemental brief.
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13 11 U.S.C. § 706(a) states: “The debtor may convert a case under this chapter to a case under chapter 11,
14 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of
15 this title.” Here, Debtor’s case was previously converted under § 1307.
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17 “Courts are divided as to whether the debtor can re-convert a case that has been previously converted.”
18 GINSBERG & MARTIN ON BANKRUPTCY § 12.13[A] (5th ed. 2017-2); *see also In re Masterson*, 141 B.R.
19 84, 87 (Bankr. E.D. Pa. 1992) (“The courts appear to be evenly divided on the issue of whether a
20 ‘second conversion’ of a case previously converted to Chapter 7 is *ever* permissible.”) (collecting cases).
21 The courts that have determined that § 706(a) bars subsequent reconversion have primarily relied upon
22 the plain language of the statute, but have also considered the legislative history. *See In re Banks*, 252
23 B.R. 399, 400 (Bankr. E.D. Mich. 2000). One court has stated the following:
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25 Unfortunately, for the debtor, the language of Section 706 clearly bars a debtor from
26 converting a case from Chapter 7 to Chapter 13 more than once. Subsection (a) of that
27 section states in relevant part that a “debtor may convert a case under this chapter to a case
28 under Chapter 11 or 13 of this title at any time, if the case has not been converted under

1 Section 1112 or 1307 of this title. The language of this statute is not discretionary. By its
2 plain meaning it bars the debtor from this second attempt at conversion. Moreover, there is
3 no case law supporting a discretionary right. At least one other bankruptcy court has arrived
4 at this conclusion, *In re Bumpass*, 28 B.R. 597 (Bankr. S.D.N.Y. 1983), and this Court shares
5 that view.
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8 *In re Nimai Kumar Ghosh*, 38 B.R. 600, 603 (Bankr. E.D.N.Y. 1984) (emphasis added) (footnote
9 omitted).

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11 As the court implicitly concluded in *Nimai Kumar Ghosh*, the phrase “if the case has not been
12 converted” appears to modify the entirety of the first clause, not simple the language “at any time.” The
13 phrase “at any time” is not set off from the remainder of the clause in any fashion. Therefore, section
14 706(a) is only applicable if the case has not been converted previously. The remaining question is, if
15 § 706(a) is inapplicable, can a debtor resort to any other mechanism in order to convert her case?
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17 Courts that have permitted a reconversion appear to fall into two categories. First, some courts appear to
18 believe that, when § 706(a) is inapplicable, the default position is that the court has discretion to allow
19 conversion based on policy grounds. *See, e.g., In re Masterson*, 141 B.R. at 88. Other courts have
20 turned to § 706(c). *See, e.g., Matter of Johnson*, 116 B.R. 224, 225 (Bankr. Idaho 1990); *In re*
21 *Sensibaugh*, 9 B.R. 45, 46 (Bankr. E.D. Va. 1981). Section 706(c) states: “[t]he court may not convert a
22 case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or
23 consents to such conversion.” While the plain language of § 706(c) indicates that it operates as a
24 restraint on a court’s authority, not as a source of authority, courts that have utilized this provision
25 appear to conclude that if the debtor consents to or requests conversion, the court has discretion to
26 permit such conversion.
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1 A third possibility is that a debtor could seek voluntary dismissal or conversion under § 707, consent to
2 conversion, and allow the court to determine whether dismissal or conversion was more appropriate in
3 the circumstances. This approach would have the disadvantage of possibly resulting in dismissal of the
4 case, but it would seem to solve the statutory interpretation issues encountered by the alternative
5 approaches.
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8 Nevertheless, the Court need not determine whether reconversion is permitted under § 706(a) because, if
9 the Court were to conclude that reconversion is discretionary, Debtor has not demonstrated that the
10 exercise of such discretion would be appropriate, nor has Debtor filed any supplemental brief or
11 evidence in response to the Court's May 3rd order. Debtor has already had a Chapter 13 case dismissed
12 in the previous year. More importantly, at the time Debtor converted to Chapter 7, Trustee had an
13 outstanding objection to the confirmation of her Chapter 13 plan for *inter alia*, failure to appear at the
14 341(a) meeting and to make plan payments. On that record, Debtor appears to be unable to successfully
15 complete a Chapter 13 case.
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17 Given Debtor's history in bankruptcy, the absence of any legal argument in Debtor's motion and the
18 absence of any evidence suggesting a change in circumstances that would allow Debtor to be successful
19 in a Chapter 13 proceeding, reconversion of the case, even if the Court were to conclude that such
20 reconversion was legally permissible, is inappropriate. Therefore, the motion is DENIED.
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27 Date: June 2, 2021
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Mark Houle
United States Bankruptcy Judge